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312 Rosa L. Parks Avenue, 8th Floor Tennessee Tower
Nashville, TN 37243
Phone: 615-741-2650
Fax: 615-741-5133
Email: register.information@tn.gov

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Sequence Number: 09-38-09
Rule ID(s): 4479
File Date: 09/29/2009
Effective Date: 12/28/2009

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205

Agency/Board/Commission:	Department of Commerce and Insurance
Division:	Division of Fire Prevention
Contact Person:	Joseph Underwood
Address:	500 James Robertson Parkway, Davy Crockett Tower, 3 rd Floor Nashville, TN
Zip:	37243
Phone:	615-741-3899
Email:	Joseph.Underwood@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables. Please enter only ONE Rule Number/RuleTitle per row)

Chapter Number	Chapter Title
0780-02-22	Fire Standard Compliant Cigarettes
Rule Number	Rule Title
0780-02-22-.01	Definitions
0780-02-22-.02	Certification
0780-02-22-.03	Test Standards
0780-02-22-.04	Markings
0780-02-22-.05	Civil Penalties
0780-02-22-.06	Forfeitures and Seizures of cigarettes

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Chapter 0780-02-22
Fire Standard Compliant Cigarettes

New Rules

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0780-02-22-.01 Definitions

- (1) As used in this chapter, unless the context otherwise requires, the definitions of terms contained in T.C.A. § 68-102-502 are applicable.
- (2) "Attorney general" means the attorney general and reporter or the attorney general's designee;
- (3) "Brand family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, "menthol," "lights," "kings," and "100s," and includes any brand name, alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes;
- (4) "State fire marshal" means the commissioner of commerce and insurance or the commissioner's designee;

Authority: T.C.A. §§ 68-102-502 and 68-102-507.

0780-02-22-.02 Certifications

- (1) Each manufacturer shall submit to the state fire marshal a written certification on a form provided by the state fire marshal containing the information required in T.C.A. § 68-102-504, along with the name and address of the true holder of the trademark rights.
- (2) Each written certification shall include a non-refundable fee as provided in T.C.A. § 68-102-504 payable to the Tennessee State Fire Marshal for each brand family of cigarettes listed in a certification.
- (3) A certification will be considered complete if all information required by T.C.A. § 68-102-504 and the name of the true holder of the trademark rights in a cigarette brand appears in the submission form.
- (4) The state fire marshal will promptly notify a manufacturer if a certification is incomplete, and will provide the manufacturer a reasonable opportunity to correct the incomplete certification. The certification will remain invalid until properly completed and re-submitted to the state fire marshal.

Authority: T.C.A. §§ 68-102-504 and 68-102-507.

0780-02-22-.03 Test Standards

- (1) Testing of cigarettes shall meet the requirements in T.C.A. § 68-102-503.

- (2) Alternative testing
- (a) A manufacturer of a cigarette that the state fire marshal determines cannot be tested in accordance with the test method prescribed in T.C.A. § 68-102-503(a)(1) shall propose a test method and performance standard for the cigarette to the state fire marshal.
 - (b) In proposing an alternative test method and performance standard, the manufacturer of the cigarette shall:
 - (i) describe why the cigarette cannot be tested in accordance with the test method specified in T.C.A. § 68-102-503(a)(1);
 - (ii) describe the test method and performance standard requesting to be used;
 - (iii) specify if the test method and performance method is based on a recognized national standard;
 - (iv) describe how the test method and performance standard requesting is equivalent to the standards contained in T.C.A. § 68-102-503(a); and
 - (v) provide information as to whether another state has approved the alternative test method and performance standard for the cigarette or any other cigarette.
 - (c) Upon a determination by the state fire marshal that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in T.C.A. § 68-102-503(a)(3), or a determination that another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are equivalent to those contained in T.C.A. § 68-102-503(a) and officials responsible for implementing those requirements have approved the proposed alternative test method and performance standard for a particular cigarette, the state fire marshal shall approve the proposed test method.
 - (d) If the state fire marshal approves the proposed test method, the manufacturer may employ such test method.

Authority: T.C.A. §§ 68-102-503 and 68-102-507.

0780-02-22-.04 Markings

Cigarettes that are certified by a manufacturer in accordance with T.C.A. § 68-102-504 and this chapter shall be marked as required by T.C.A. § 68-102-505.

Authority: T.C.A. §§ 68-102-505 and 68-102-507.

0780-02-22-.05 Civil Penalties

The state fire marshal may assess a civil penalty for each separate violation of T.C.A. Title 68, Chapter 102, Part 5 pursuant to T.C.A. § 68-102-506.

- (1) In determining the amount of a civil penalty the state fire marshal may consider the following factors:
 - (a) whether the amount imposed will be a substantial economic deterrent to the violator;
 - (b) the circumstances leading to the violation;
 - (c) the severity of the violation and the risk of harm to the public;
 - (d) the economic benefits gained by the violator as a result of non-compliance; and

(e) the interest of the public.

Authority: T.C.A. §§ 68-102-503, 68-102-506 and 68-102-507.

0780-2-22-.06 Forfeitures and Seizures of cigarettes

A notice of forfeiture or seizure of cigarettes, forfeited pursuant to T.C.A. § 68-102-506(e) or seized pursuant to T.C.A. § 68-102-506(g), will be mailed to the true holder of the trademark rights in the cigarette brand in order to afford the true holder an opportunity to inspect the cigarettes. Forfeited or seized cigarettes may be destroyed sixty (60) days after the mailing of the notice of forfeiture or seizure.

Authority: T.C.A. §§ 68-102-506(e) and (g), and 68-102-507.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner of Commerce and Insurance on 9/14/09, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 06/24/09

Rulemaking Hearing(s) Conducted on: (add more dates). 08/18/09



Date: 9/14/09

Signature: Leslie A. Newman

Name of Officer: Leslie A. Newman

Title of Officer: Commissioner Department Commerce & Insurance

Subscribed and sworn to before me on: 9/14/09

Notary Public Signature: Alexise M. Lewis

My commission expires on: 3/5/12

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.
Robert E. Cooper, Jr.
Attorney General and Reporter
9-27-09
Date

Department of State Use Only

Filed with the Department of State on: 9/29/09

Effective on: 12/28/09

Tre Hargett
Tre Hargett
Secretary of State

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2009 SEP 29 AM 9:33
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PUBLICATIONS

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

No oral comments were received during the rulemaking hearing. And, only one (1) written comment from was received prior to the rulemaking hearing. The comment period was left open for two (2) weeks after the hearing until August 31 and no other written comments were received during that time.

Ron Gahagan, Assistant General Counsel for Altria Client Services, submitted written comments in regards to the proposed rules. Mr. Gahagan, on behalf of Philip Morris USA Inc., suggested changes to the proposed rules to make them more uniform with the Tennessee statute. Mr. Gahagan's suggestions were mostly non-substantive and were primarily stylistic recommendations. However, there was one particular instance in which Mr. Gahagan advised a substantive amendment to the proposed rules. Mr. Gahagan expressed concern with the requirement in paragraph (1) of rule 0780-02-22-.02 that the name and address of the true holder of the trademark rights be included in the certification submitted to the state fire marshal. Mr. Gahagan argued that the statute, in particular T.C.A. § 68-102-504, does not require this information for certification. And, therefore, Mr. Gahagan believes that the rules do not accurately reflect the statute in this particular matter.

Response: The Department appreciates these comments and they have been considered. The Department amended its proposed rules to incorporate several of Mr. Gahagan's stylistic recommendations. The Department disagrees with Mr. Gahagan's assertion that the name and address of the true holder of the trademark for a brand family of cigarettes is outside the scope of information the statute requires the Department to collect. T.C.A. 68-102-506(g) authorizes and empowers the state fire marshal to seize and take possession of any cigarettes that have not been marked in the manner required by § 68-102-505. Moreover, in regards to cigarettes forfeited pursuant to T.C.A. § 68-102-506(e) or seized pursuant to T.C.A. § 68-102-506(g), the state fire marshal is required by T.C.A. § 68-102-506(e) and (g) to notify the true holder of the trademark rights in the cigarette brand so that the true holder of the trademark rights in the cigarette brand may inspect the forfeited or seized cigarette prior to their destruction. The state fire marshal has determined the most efficient method in which to obtain the name and address of the true holder of the trademark rights in a cigarette brand is to require this information be provided on the certification form. By obtaining this information at the beginning of the certification process, the state fire marshal believes that it will be more cost-efficient to comply with the statute's requirement to notify the true holder of the trademark rights in a cigarette brand so that they have the opportunity to inspect the forfeited or seized cigarettes prior to their destruction.

Regulatory Flexibility Addendum

Pursuant to T.C.A. § 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

Regulatory Flexibility Analysis:

1. Overlap, duplicate, or conflict with other federal, state, and local governmental rules:

There will be no overlap, duplication, or conflict with other federal, state or local governmental rules. This law will cease to be effective if federal reduced cigarette ignition propensity standard that preempts the law is adopted and becomes effective.

2. Clarity, conciseness, and lack of ambiguity in the rules:

The rules are clear in purpose and intended execution. The rules are not open to different interpretations.

3. Flexible compliance and/or reporting requirements for small businesses:

In order to ensure the health, safety and welfare of the citizens of Tennessee, it is imperative that small businesses are held to the same standards as larger businesses regarding the certification and marking of fire standard compliant cigarettes. The statute set the compliance and reporting requirements

4. Friendly schedules or deadlines for compliance and/or reporting requirements:

In order to ensure the health, safety and welfare of the citizens of Tennessee, it is imperative that small businesses are held to the same standards as larger businesses regarding the certification and marking of fire standard compliant cigarettes. The statute set the effective date of the certification program one (1) year after passage to allow small businesses time in which to prepare for compliance.

5. Consolidation or simplification of compliance or reporting requirements:

The "Fire Safety Standard and Firefighter Protection Act" requires manufacturers of cigarettes to test, certify as fire safe and mark as fire safe all cigarettes to be sold or offered for sale in Tennessee.

6. Performance standards for small businesses:

The Department expects all small businesses that sell or offer to sell cigarettes to follow the laws regarding the testing, certification and marking of fire standard compliant cigarettes. The statute allows a manufacturer to use an alternative test method if they cannot test according to the method provided in the statute.

7. Barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs:

The "Fire Safety Standard and Firefighter Protection Act" requires manufacturers of cigarettes to test, certify as fire safe and mark as fire safe all cigarettes to be sold or offered for sale in Tennessee. These requirements increase manufacturing costs for the production of cigarettes.

Economic Impact Statement:

1. Types of small businesses directly affected:

All small businesses that manufacture cigarettes that are sold or offered for sale in Tennessee will be affected by this new law.

2. Projected reporting, recordkeeping, and other administrative costs:

There will be additional reporting, recordkeeping and other costs associated with the manufacturing of cigarettes in order to meet the testing, certification as fire safe and marking as fire safe requirements for all cigarettes to be sold or offered for sale in Tennessee.

3. Probable effect on small businesses:

There will be additional costs associated with manufacturing of cigarettes in order to meet the testing, certification as fire safe and marking as fire safe requirements for all cigarettes to be sold or offered for sale in Tennessee.

4. Less burdensome, intrusive, or costly alternative methods:

The proposed new rules are minimally burdensome/intrusive to small businesses.

5. Comparison with federal and state counterparts:

There are no federal counterparts to the issues addressed by these rules.

6. Effect of possible exemption of small businesses:

In order to ensure the health, safety and welfare of the citizens of Tennessee, it is imperative that small businesses are held to the same standards as large businesses regarding the testing, certification as fire safe and marking as fire safe of all cigarettes to be sold or offered for sale in Tennessee.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The Department convened a rulemaking hearing on 08/18/2009 in order to adopt rules to implement the "Fire Safety Standard and Firefighter Protection Act" (Chapter 920 of Public Acts of 2008) codified as T.C.A. § 68-102-501 et seq. The "Fire Safety Standard and Firefighter Protection Act" becomes effective on January 1, 2010. This law requires all cigarettes sold or offered for sale in Tennessee to be tested, certified as fire safe and marked as fire safe.

The rules contain definitions for "attorney general", "brand family", and "state fire marshal". The rules describe the certification process, explain the procedure for proposing alternative test methods and performance standards, and establish the guidelines for the Commissioner to consider when issuing civil penalties for violations of the "Fire Safety Standard and Firefighter Protection Act". The rules also clarify the course of action the state fire marshal will take in regards to cigarettes forfeited pursuant to T.C.A. § 68-102-506(e) or seized pursuant to T.C.A. § 68-102-506(g).

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

There are no federal counterparts to the issues addressed by these rules; however, the "Fire Safety Standard and Firefighter Protection Act" (Chapter 920 of Public Acts of 2008) codified as T.C.A. § 68-102-501 et seq. requires that these rules be promulgated.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

These rules will affect all manufacturers of cigarettes. The "Fire Safety Standard and Firefighter Protection Act" requires manufacturers of cigarettes to test, certify as fire safe and mark as fire safe all cigarettes to be sold or offered for sale in Tennessee. These requirements will increase manufacturing costs for the production of cigarettes.

- (D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

I am unaware of any opinion of the attorney general or any judicial ruling that directly relates to these rules.

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

These rules are expected to have a neutral fiscal impact on the Department due to the fees, which have been set by statute; received for the certifications will be directed toward the administration of the program thereby ensuring that it will be self-sufficient.

- (F)** Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Joseph Underwood, Assistant General Counsel for the Division, and DeAnn Demonbreun, Director for Administrative Services Section, have substantial knowledge and understanding of these rules.

- (G)** Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Joseph Underwood, Assistant General Counsel for the Division, and DeAnn Demonbreun, Director for Administrative Services Section, will explain the rules at any scheduled meeting of the Government Operations Committee.

- (H) Office address and telephone number of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Joseph Underwood and DeAnn Demonbreun may be reached at the Department of Commerce and Insurance, 500 James Robertson Parkway, 3rd Floor, Davy Crockett Tower, Nashville, Tennessee 37243, (615) 741-3899 or (615) 253-3664.

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.